

Exhibit 2

Welch, Jon M MSgt USAF USAFE 37 AS/CCF

From: Tony [REDACTED]
Sent: Tuesday, April 22, 2008 8:12 PM
To: Welch, Jon M MSgt USAF USAFE 37 AS/CCF
Subject: Loverde- Request
Attachments: REDACTED -Admission Letter.doc

MSgt Welch,

Good Day. I apologize for the email, but this is a sensitive subject and I am not sure how to go about dealing with it.

The recent deployment has brought some issues to my attention that I assumed I had mastered my ability to squash in my past 7 years as an active duty member. The truth is I am very stressed out and I have come to the decision that it is more important for me to live honestly than to continue a life of false statements and distant relations among my peers. The fact is that I am a gay man, and living and flying with aircrew has posed some difficult personal questions I was faced to answer during my deployment.

I was constantly on guard to protect myself from questions about dating, relationships, and extra curricular activities asked by fellow crew members. No one ever thinks that a simple question like "Are you dating anyone," "What aspect of a women most attracts you," "What bars do you go to?" etc., would be very stressful questions to answer...but they are for a gay person.

So, I feel the need to come out. I just can't deal with living a double life among people that may or may not care if I am gay. I have no problem serving my commitment to the very end...but I can not do it silently. I know the commander has limited options regarding this matter due to DOD policy, but again...I am tired of lying my entire life in my professional career.

I am sending this message to you because I know SMSgt Broughman is very homophobic, he has made statements to me regarding his position. You may be homophobic as well, but I wouldn't know. It is sad that I have to make a choice between living honestly or serving my country...but it is a choice I am faced with today.

Please let me know you received this message, what you and the commander's intentions may be. Like I said, I have no problem serving my commitment, but I would like my sexuality disclosed to my crew for the next deployment. I think that is fair for everyone involved.

Sincerely,
Anthony Loverde, SSgt, USAF

P.S. I plan on being in the Netherlands Wednesday and Thursday visiting a friend. You can call my cell phone REDACTED if you have any questions.

*Attached is the "legal" statement that most gay service members use in this kind of situation

From: Anthony Loverde
Date: 22 April 2008

To Whom It May Concern,

I strive to be honest. Increasingly, I realize that in order to live up to this ideal I need to be honest also about my sexual orientation, and can no longer hide it.

I'm writing to inform you that I for someone who has been out to themselves for a longer time am a gay man.

I do not want to face discrimination if I choose to act on my sexual orientation.

Because of Congress and the military's unfortunate and discriminatory laws, regulations, and policies, I understand that the military is required to discharge me because of my honesty about my sexual orientation. I understand that I am to receive a discharge consistent with my service record of the same type (honorable, for example), that I would receive if I were being discharged for any non-punitive reason (such as hardship). I also understand that under the so-called, "Don't Ask. Don't Tell. Don't Pursue. Don't Harass," military regulations, directives, and policies, I am not to be asked questions about sexual behavior*, and that you will act to prevent any harassment or other discrimination against me while my discharge is being processed.

I appreciate your prompt attention to this sensitive matter.

Sincerely,

Anthony Loverde, SSgt, USAF

* Under Secretary of Defense (Personnel & Readiness) Memo, 12 August 1999: Implementation of Recommendations Concerning Homosexual Conduct Policy. See also the Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services, 103rd Cong., 2nd Sess. (1993) at 789, comments by then DoD General Counsel Jamie Gorelick: "Once you establish the elements of the offense or basis for discharge, you go no further."

Applicable regulations:

Enclosure 3 to DoDD 1332.14 (2003), Enlisted Administrative Separations
AFI 36-3208, Administrative Separation of Airmen (July 9, 2004)



**AIR FORCE LEGAL SERVICES AGENCY
AREA DEFENSE COUNSEL
Ramstein AB, Germany
480-2182/2492, Fax 480-2971
SW Asia 314-480-9734/2492
adc@ramstein.af.mil**

FACT SHEET

**ADMINISTRATIVE SEPARATION OF AIRMEN AFI 36-3208
(DISCHARGE)**

1. **Introduction.** The purpose of this fact sheet is to provide answers to questions you may have concerning discharges under AFI 36-3208. For example, how is a discharge under AFI 36-3208 processed and how does it affect you? Once you are notified that discharge proceedings have been initiated, how long does it take until you are actually out of the Air Force? What are your veteran and military entitlements? Can an administrative discharge be upgraded? After you've read this fact sheet, you should have a general understanding regarding these questions.

2. **Nature of a Discharge.** Involuntary discharge is not "punishment." A commander usually starts the process for involuntary discharge when the decision has been made that it is not in the best interest of the Air Force to keep you in the military service. Although there are many reasons your commander may initiate discharge, more often than not, this decision is made after repeated counseling, reprimands, and nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ). It is *not double jeopardy* to initiate discharge for the same reason(s) for which you were punished under Article 15. One way of looking at it is that reduction in rank, forfeiture of pay, extra duty and/or restriction are the result of an Article 15 action and are punishment but an involuntary discharge is an employment decision, like being laid off or fired.

3. **Grounds for Discharge.** AFI 36-3208 sets forth the conditions under which you can be separated from the Air Force before the expiration of your enlistment. Chapter 5, in particular, is the authority for enlisted involuntary discharge. Airmen are most frequently discharged under one of the following paragraphs:

a. **Paragraph 5.49, Minor Disciplinary Infractions.** These infractions involve minor misconduct such as failure to comply with nonpunitive regulations or minor offenses under the UCMJ.

b. **Paragraph 5.50, A Pattern of Misconduct.** Airmen are subject to discharge for a pattern of misconduct consisting wholly or in part of misconduct more serious than that considered under paragraph 5.49. Subsections include the following:

- (1) Discreditable Involvement With Military or Civil Authorities;
- (2) Conduct Prejudicial to Good Order and Discipline;
- (3) Failure to Support Dependents; and
- (4) Dishonorable Failure to Pay Just Debts.

c. **Paragraph 5.51, Civilian Conviction.** Airmen are subject to discharge for misconduct based on conviction by civilian authorities or action tantamount to a finding of guilty when:

- (1) A punitive discharge would be authorized for the same or closely related offense under the Manual for Courts-Martial (MCM), or
- (2) The sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

d. **Paragraph 5.54, Drug Abuse.** Drug abuse is incompatible with military service and airmen who abuse drugs one or more times are subject to discharge for misconduct. For more information about retention criteria under this type of discharge, refer to paragraph 5.55.2.1 of AFI 36-3208.

e. **Paragraph 5.65, Exceeding Weight Standards.** Airmen who exceed the body fat standards of AFI 40-502 may be discharged when they fail to make progress on the program due to reasons within their control.

f. **Paragraph 5.11, Conditions That Interfere with Military Service.** Airmen may be discharged based upon one of the physical or mental conditions listed in this paragraph when the commander determines that the condition interferes with assignment or duty performance. The most common example is a DSM IV character or behavior disorder under **paragraph 5.11.1, Mental Disorders**, and it must be proven that the condition is so serious that it will significantly impair the military member's ability to function in a military environment. Such disorders and their severity must be documented by a mental health evaluation.

4. **Initiation Procedure.** If your commander determines that you should be recommended for discharge, he or she will present this evidence to the base legal office for their review. The legal office will determine if the file is legally sufficient to sustain discharge. After the legal review, the "Letter of Notification" is prepared and presented to you by your commander. This letter informs you of the recommendation the commander is making and of the specific reasons for this action. This letter also informs you of the type of discharge the commander is recommending (honorable, general under honorable conditions or under other than honorable conditions). Finally the letter summarizes your rights either under "notification proceedings" or "discharge board proceedings."

5. **Notification Proceedings.** In notification proceedings, you have the right to submit written statements on your behalf within 3 duty days. Try to gather as many character references as possible to submit for review by the separation authority, typically the wing commander or Numbered Air Force commander. This is especially important if you are asking for Probation and Rehabilitation (P&R) or retention. After the separation authority has decided your case, you will be notified in writing of the decision.

6. **Right to a Board.** You are entitled to an administrative discharge board hearing if one or more of the conditions listed below apply:

- (a) You are a NCO at the time discharge processing starts
- (b) You have 6 years or more total active and inactive military service at the time the discharge processing starts. This includes service in the delayed enlistment program (DEP)
- (c) An Under Other Than Honorable Conditions (UOTHC) discharge is recommended
- (d) The basis of the action involves homosexual conduct
- (e) Discharge in the interest of national security is recommended

7. **Board Proceedings.**

a. A board proceeding is somewhat similar to a court-martial proceeding in its format, but it is not controlled by the same stringent rules of evidence.

b. The burden of proof is on the government to establish each allegation in the notification memorandum by a preponderance of evidence. The preponderance of evidence simply means the greater weight of credible evidence. You are referred to as the "respondent" and your defense counsel, known as "respondent's counsel," represents you in such proceedings. An attorney from the legal office acts as the "recorder." The jury is a panel of three officers qualified pursuant to the standards found in the UCMJ, Article 25(d)(2). In addition, enlisted may request enlisted members.

b. The purpose of an administrative discharge board is to serve as a fact finding and recommendation board. It must reach clear, logical findings of fact as to each allegation set out in the notification letter. On the basis of its findings, the board recommends:

- (1) whether the evidence supports administrative discharge, and
- (2) whether the respondent should be discharged

If the board recommends discharge, it must also make separate recommendations as to:

- (1) the type of separation, and
- (2) whether the respondent should be offered an opportunity for probation and rehabilitation (P&R)

c. The separation authority in board cases is typically the Numbered Air Force Commander. The separation authority is bound by some, but not all, of the board's findings and recommendations. For instance, the separation authority is not required to offer probation and rehabilitation even if recommended by the board. After the separation authority has decided your case, you will be notified in writing of the decision.

8. **Probation and Rehabilitation (P&R).** The objective of P&R is to allow you one more chance at rehabilitation. It gives you an opportunity to remain in the Air Force until your term of enlistment has expired. If approved for P&R, you are notified of a specific period of probation not less than 6 months or more than 12 months. This is a suspension period in which you must show that you are capable of good conduct for a reasonable period of time and in varying conditions, able to perform your assigned duties well, and meeting Air Force standards.

9. **Qualification for Worldwide Duty.** Before you may be administratively discharged, you must be certified as medically qualified for worldwide duty. If you are not qualified, your administrative discharge action under AFI 36-3208 must be jointly processed together with a disability discharge action under AFI 36-3212. Medical examinations are generally valid for a period of one year. Joint processing will add a minimum of several months to out processing time.

10. **Out-Processing Time.** According to AFI 36-3208, table 6.4, the average processing time goals (i.e. number of work days between the date discharge action starts and the date of separation or date of departure from the overseas area) depends upon the processing method. If the method is:

- | | |
|--|---------|
| a. Notification procedure: | 10 days |
| b. By board hearing: | 55 days |
| c. By board hearing with waiver: | 30 days |
| d. By request for discharge in lieu of trial by court-martial (Chapter 4): | 30 days |

11. **Clothing Turn-In.** If your discharge is approved and you have served **less than 36 months** you will be **required** by AFMAN 23-110, Vol 1, Part 3, Chapter 2, paragraph 2.79, to **turn in a complete issue of uniforms**. A list of these items is located in attachment 2 of AFI 36-3014. The purchase price of any items you do not have will be withheld from your final pay. Check with your First Sergeant for details.

12. **Types of Service Characterizations.**

a. **An Honorable Discharge** is a separation from the Air Force under honorable conditions.

b. **A General Discharge** is also a separation under honorable conditions. As such, you are normally qualified for all veteran's benefits that you would receive with an honorable discharge -- **with the exception of your GI Bill benefits**. You generally must have an honorable discharge to be entitled to payments under the GI Bill. Usually a general discharge reflects a military record not sufficiently meritorious to award an honorable discharge. A general discharge has been found to be a disadvantage in seeking some civilian employment.

c. **An Under Other Than Honorable Conditions (UOTHC) Discharge** carries a serious stigma. A UOTHC is the worst possible administrative discharge. You receive this discharge when your personal conduct falls significantly below acceptable military standards. Such a discharge may deprive you of veteran's benefits and may substantially hinder post-service employment or education.

d. **An Entry Level Separation** is given only if you are in your first 180 days of continuous active military service. This is a discharge that does not attempt to characterize the type of service as either good or bad. It is not the only type of separation authorized during the first 180 days of military service, as it is possible for a person to receive either an honorable or an under other than honorable conditions discharge as well.

13. **Travel Pay.** Under the Joint Federal Travel Regulation, Volume 1, U7500, you are entitled to the costs of a PCS move and travel to your Home of Record (or closer area) if you receive an honorable, general, or a UOTHC discharge. Check with your local TMO office for more information.

14. **Educational Benefits.** Under the most recent veterans educational assistance act, the "Montgomery GI Bill," you are entitled to educational benefits only if you received an honorable discharge. A case-by-case determination is made when you are discharged with a general under honorable conditions discharge. For more information about the GI Bill, contact your local VA representative or visit: www.gibill.va.gov.

15. **Entitlements.** Refer to attachment 3 to determine what entitlements you have after discharge. Basically, an honorable or general discharge entitles you to all veterans benefits for which you otherwise qualify with the exception of insurance and certain medical benefits. With a UOTHC discharge, you may or may not qualify for veteran's benefits depending upon a special determination, based on the facts of each case. For more information, contact your local VA representative.

16. **Post-Discharge Review.** Once an administrative discharge is approved, there is no military appeal procedure and the upgrade of an administrative discharge is ***NOT*** automatic. However, after separation, the individual may seek review of the case and possible upgrading of the discharge by applying to the Air Force Discharge Review Board within 15 years or to the Air Force Board for Correction of Military Records within 3 years. The website address for the Air Force Discharge Review Board is: www.afpc.randolph.af.mil/safmibr. Procedures for making such applications are set forth in AFPAM 36-2607 and AFI 36-2603. These regulations are available from the Chief of Administration of any Air Force installation, from the Discharge Review/Correction Board Reading Room, located in the Pentagon, Washington, DC 20310, or on the AF Pubs website: <http://afpubs.hq.af.mil>. Some veterans organizations provide assistance in processing such cases and the individual may, if desired, retain legal counsel to assist in making and completing an application.

17. **Conclusion.** This fact sheet is intended to give you an overview of discharge actions under AFI 36-3208. The OPR for separations is the Separations Section of your local MPF. If you have any further questions, please review the referenced regulations or feel free to contact this office.

ATTACHMENT 1 - SAMPLE LETTER TO YOUR COMMANDER

USE APPROPRIATE LETTERHEAD

Date

MEMORANDUM FOR UNIT/CC

FROM: Amn John D. Doe

SUBJECT: Response to Involuntary Discharge

1. Tell the commander what you are seeking, e.g., I received notice that you are recommending that I be discharged for minor disciplinary infractions. I understand that you are recommending that I receive an Under Honorable Conditions (General) discharge. I respectfully request that you consider the following information before making your recommendation to the separation authority.
2. Background: Detail where you were born. Include your education, school activities, employment during school years, if any, and any special achievements and awards. Discuss why you joined the Air Force, including your desire to serve your country, to learn new job skills, travel, educational benefits, and anything else, which motivated you to enlist.
3. Talk about the training you received in the Air Force. Include technical school, where, when, what field. Highlight any special honors earned. If selected for further training, include these as well even if they are for additional duties.
4. Talk about your military assignments. For example, when did you arrive here, what is your present assignment, do you like what you're doing; include awards and decorations. Discuss activities you have been involved with, such as squadron athletics, community, part-time job, church, etc.
5. Tell the commander what you are asking for (honorable discharge, withdraw the discharge or probation and rehabilitation). Justify why the commander should make that decision. Tell them why you're an asset to the Air Force. If you don't want to be retained, request an honorable discharge or discuss your future plans.

FIRST MI. LASTNAME, Rank, USAF

ATTACHMENT 2 - SAMPLE CHARACTER REFERENCE LETTER FORMAT

USE THE APPROPRIATE LETTERHEAD

Date

MEMORANDUM FOR UNIT/CC

FROM: SMSgt Jason D. Joe

SUBJECT: Character Reference Letter - SrA Last Name

1. Introduce yourself. What is your duty title, how long have you been in the USAF? Have you been a supervisor? Of how many people?
2. How long and in what capacity do you know the respondent? How much interaction did you have with the respondent? Were these mostly on or off-duty? What was your relationship? Co-worker or supervisor?
3. Describe the qualities of SrA Last name. What job does he/she hold? What was his or her duty performance like? Performance of additional duties. Discuss character and military bearing, honest, trustworthy, reliability, self-starter, eager, industrious, well organized, knowledgeable, efficient, agreeable, polite, well mannered.
4. What are your recommendations for retention? Would you want this person to work for you again? Comment on rehabilitation, a good risk for retention, likely to succeed in the Air Force.

FIRST MI. LASTNAME, Rank, USAF
Unit/Organization

ATTACHMENT 3 SUMMARY OF DISCHARGE BENEFITS

Benefits Administered by the Air Force

	H	G	U	B	D
1. Payment of Accrued Leave	E	E	NE	NE	NE
2. Death Gratuity (6 months Pay)	E	E	E	E	NE
3. Transportation to Home	E	E	E	E	E
4. Trans. of Depd and Household Goods to Home	E	E	NE*	NE*	NE*
5. Wear of Military Uniform	E	E	NE	NE	NE
6. Admission to Soldiers' Home	E	E	NE	NE	NE
7. Burial in National Cemetery	E	E	NE	NE	NE
8. Headstone marker	E	E	NE	NE	NE

Benefits Administered by the VA

	H	G	U	B	D
1. Dependency and Indemnity Comp.	E	E	TBD	TBD*	NE
2. Comp of Svc-connected Disability or Death	E	E	TBD	TBD*	NE
3. Pension for Nonsvc-conn Disability or Death	E	E	TBD	TBD*	NE
4. Medal of Honor Pension	E	E	TBD	TBD*	NE
5. Insurance	E	E	TBD*	TBD*	TDB*
6. Vocational Rehabilitation	E	E	TBD	TBD*	NE
7. Educational Assistance	E	NE*	TBD	TBD*	NE
8. Dependent Educational Assistance	E	E	TBD	TBD*	NE
9. Home and Other Loan	E	E	TBD	TBD*	NE
10. Hosp. And Ancillary Care	E	E	TBD	TBD*	NE
11. Medical and dental Services	E	E	TBD	TBD*	NE
12. Prosthetic Appliances (DV)	E	E	TBD	TBD*	NE
13. Guide Dogs and Equipment for Blindness (DV)	E	E	TBD	TBD*	NE
14. Special Housing (DV)	E	E	TBD	TBD*	NE
15. Automobiles (DV)	E	E	TBD	TBD*	NE
16. Funeral and Burial Expenses	E	E	TBD	TBD*	NE
17. Burial Flag	E	E	TBD	TBD*	NE

Benefits Administered by Other Federal Agencies

	H	G	U	B	D
1. Preference for Farm Loan	E	E	E	E	NE
2. Other Rural Housing Loans	E	E	E	E	NE
3. Veterans Preference	E	E	NE	E	NE
4. Civil Service Requirement Credit	E	E	NE	E	NE
5. Reemployment Rights	E	E	NE	NE	NE
6. Job Counseling and Employment Placement	E	E	E	E	NE
7. Unemployment Comp for ex-servicemen	E	E	NE	NE	NE
8. Naturalization Benefits	E	E	TBD*	TDB*	NE*

Legend: E = Eligible	H = Honorable Discharge
TBD = To be Determined by Agency	G = General Discharge
NE = Not Eligible	U = Under Other Than Honorable
DV = Eligibility Depends on Specific disability	B = Bad Conduct Discharge (BCD)
* = see the VA for applicable directives	D = Dishonorable Discharge (DD)